

STEPHEN YAGMAN (SBN 69737)
 filing@yagmanlaw.net
 (for filings only)
 YAGMAN + REICHMANN, LLP
 333 Washington Boulevard
 Venice Beach, California 90292-5152
 (310) 452-3200

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

A.W. CLARK, Plaintiff, v. SHIRLEY N. WEBER, as California Secretary of State, and DONALD JOHN TRUMP, Defendants.	2:23-cv-007489-DOC(DFM) FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND FOR DAMAGES (10/16/23) DEMAND FOR JURY CLASS ACTION ALLEGATIONS Judge David O. Carter
--	--

INTRODUCTION.

1. Section 3 Disqualification from Holding Office

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const., 14th amend., § 3.

1 2. "The[] [plaintiff] seek[s] relief in order to protect or vindicate an interest
2 of [his] own, and of those similarly situated [persons][,]" *Baker v. Carr*, 369 U.S.
3 186, 206, 82 S.Ct. 691 (1962), in that plaintiff is an eligible, registered voter --
4 registered as a Republican, who will suffer an injury unique to him and to other,
5 similarly-situated eligible, Republican voters, to wit, a deprivation of the right to
6 vote for a candidate for president of the United States who is constitutionally
7 eligible for be president, for if plaintiff and class members, who intend to vote for
8 Trump, vote for a candidate who is not qualified to be president, plaintiff and class
9 members will have been deprived of their rights to vote. Democratic voters will
10 not suffer any injury to their voting rights were Trump to be on the ballots.
11

12 3. As of Feb. 10, 2023,¹ there were 963,881 registered Republicans in Los
13 Angeles County, who constituted 17.12% of all registered voters. This is Class 1.

14 4. As of Feb. 10, 2023, there were 5,236,952 registered Republicans in
15 California, who constituted 23.83% of all registered voters in California. This is
16 Class 2.

17 5. As of Feb. 10, 2023, there were 38.8 million registered Republican voters
18 in the United States. (Not all states have people register with a party or report the
19 exact number.) This is Class 3.

20 6. As of Oct. 9, 2023, an average of polls compiled on "538.com" show
21 defendant Trump at 55.9% support in the Republican primary.

22 7. Beginning prior to Jan. 6, 2021, and continuing until after Jan. 20, 2021,
23 Donald John Trump ("Trump"), on Jan. 20, 2017, took an oath as an officer of the
24 United States to support the Constitution of the United States, and thereafter
25 engaged in insurrection and/or rebellion against the same, so that Trump may not
26 again hold any office under the United States.

27
28 ¹ The most recent such, reliable data available.

1 8. Trump now, once again seeks to hold the office of president of the United
2 States, but he is barred from doing so.

3 **JURISDICTION AND VENUE**

4
5 9. Plaintiff asserts federal claims, under 42 U.S.C. § 1983 (civil rights),
6 against defendant, and subject matter jurisdiction lies pursuant to 28 U.S.C. §
7 1331 of plaintiff's federal claims. Plaintiff asserts a state law claim, based on both
8 diversity of citizenship jurisdiction, under 28 U.S.C. § 1332(a)(1), as plaintiff and
9 Trump are citizens of different states -- plaintiff of California and Trump of
10 Florida, based on supplemental jurisdiction, under 28 U.S.C. § 1367.

11 10. The matters that are the bases for this action occurred in Los Angeles
12 County, California, and both defendants have submitted to the personal
13 jurisdiction of the court, by voluntarily filing papers in this action.

14 **THE PARTIES**

15
16 11. Plaintiff is a person who is an eligible voter as to the upcoming March
17 2024 presidential primary election and the Nov. 2024 presidential election, in
18 which it is to be decided who will become the 47th president of the United States.

19 12. Defendant Weber is the California officer who is charged with
20 conducting and administering the March 2024 primary election and the Nov. 2024
21 presidential election.

22 13. Defendant Trump has requested that his name be set forth on both
23 ballots.

24 14. Defendant Trump engaged in an insurrection against the United States,
25 rebelled against the United States, and gave aid and comfort to enemies of the
26 United States, as set forth in Exhs. 1 & 2 to plaintiff's pending motion for a
27 preliminary injunction, Doc. 13, whose contents are incorporated herein by this
28 reference.

ALLEGATIONS COMMON TO EACH COUNT

15. Each and every allegation set forth in each and every averment of this complaint hereby is incorporated in each and every other averment and allegation of this complaint.

16. "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." California Constitution, Art. II, § 1.

17. "A United States citizen 18 years of age and resident in this State may vote." *Id.* at § 2(a).

18. Plaintiff and all Class Members are United States citizens who are over 18 years of age, members of Classes 1 & 2 are residents of California, and members of Class 3 are not residents of California, and all of whom are entitled to and who may vote.

19.-99. Reserved.

COUNT 1

(Violation of Sec. 3 , Under the 14th Amendment)

100. Section 3 of the Fourteenth Amendment to the United States Constitution prohibits and bars Trump from holding any office under the United States.

101. It prohibits and bars Trump from being president of the United States.

102. Defendant Weber is charged with promulgating and authoring the ballots for the Nov. 2024 presidential election, and she should be prohibited from placing Trump's name on any primary or general election ballots in California, and Trump should be enjoined from requesting that his name be on any 2024 ballot.

103. Defendant Trump should be prohibited from seeking to have his name put on any ballot for the March 2024 primary election and for the Nov. 2024 general election.

//

1 **COUNT 2**

2 **(Violation of the Right to Due Process of Law, Under the 14th Amendment)**

3 104. Section 1 of the Fourteenth Amendment to the United States
4 Constitution provides that "nor shall any State deprive any person of life, liberty,
5 or property, without due process of law" This right includes the right to vote.

6 105. The right to vote includes as a necessary component the right to vote
7 for a candidate for president who is constitutionally eligible to be president and
8 who is not prohibited or barred from being president.

9 106. Defendant Weber putting or allowing the putting of Trump's name on
10 any ballot for any 2024 presidential election, and, similarly, Trump requesting that
11 his name be on any ballot, would violate plaintiff's and all class members' Due
12 Process rights, both substantive and procedural, under the Fourteenth Amendment.

13 **COUNT 3**

14 **(Violation of Right of Equal Protection)**

15 107. For the reasons set forth hereinabove, plaintiff and all class members
16 would be deprived of their right to equal protection were Trump's name to appear
17 on any 2024 ballot.

18 **COUNT 4**

19 **(Negligence [Infliction of Emotional Distress])**

20 108. Plaintiff and class members are direct victims of Trump's acts of
21 creating and participating in insurrection, rebellion, and giving aid to the enemy,
22 by their repeated and innumerable viewings of those acts on television, on the
23 radio, and in numerous publications, including the photographs and videos in
24 those publications, who thereby were percipient and direct witnesses to those acts,
25 often contemporaneously with their occurrence. Trump's conduct put plaintiff and
26 all class members at the scene of the insurrection, rebellion, and the giving of aid
27 to the enemy.

28

1 109. Trump had a legal duty to plaintiff and to all class members not to
2 engage in acts that would cause serious and extreme emotional distress to persons
3 who would observe his conduct and its consequences, including plaintiff and class
4 members.

5 110. Plaintiff and all class members suffered harm from Trump's insane
6 conduct based on a direct victim theory.

7 111. Trump's misconduct constituted negligence, a cause of action in which
8 Trump had a duty to plaintiff and to all class members.

9 112. Trump assumed a duty to plaintiff and class members and then
10 breached that duty, which, in turn, was the proximate cause of plaintiff's and class
11 members' injuries.

12 113. Trump had a special relationship with plaintiff and with all class
13 members.

14 114. The harm that Trump caused was foreseeable, including moral blame
15 attached to Trump's conduct, the policy of preventing future harm, and the extent
16 of the burden to Trump, and all imposed a duty on Trump to exercise care with
17 resulting liability, and the consequences to the community of imposing a duty to
18 exercise care with resulting liability for Trump's breach of his duty.

19 115. Trump is liable to plaintiff and class members under Cal. Civ. Code §
20 1714(a), because, under that section, "[e]veryone is responsible, not only for the
21 result of his or her willful acts, but also for an injury occasioned to an another by
22 his or her want of ordinary care"

23 116. By virtue of the allegations set forth in avers. 108-16, Trump is liable
24 in damages to plaintiff and all class members in sums in excess of \$75,000,
25 excluding interest and costs.

26 //

27 //

28

1 117.-272. Reserved.

2 **CLASS ACTION ALLEGATIONS**

3 273. Plaintiff is a member of three classes, whose defining characteristics
4 are Class 1, that they are persons who are California Republican, 2024 primary
5 and general election voters, who wish to vote in both elections for Trump but who
6 do not wish to vote for Trump if he is disqualified from being president, based on
7 his acts of insurrection, rebellion, and giving aid an comfort to enemies of the
8 United States, because were they to cast their ballots for Trump in that case they
9 would have been deprived of their right to vote.
10

11 274. The classes contain over 963,881 persons registered as Republicans in
12 Los Angeles County -- Class 1; 5,236,952 persons registered as Republicans in the
13 State of California -- Class 2; and, 38.8 million persons registered as Republicans
14 in the United States of America -- Class 3, and each of the three classes are so
15 numerous so that joinder of all class members is impracticable.

16 275. There are only common questions of fact and of law with respect to all
17 class members of each class, to wit: (1) did Trump engage in insurrection,
18 rebellion, or give aid and comfort to enemies of the United States -- the mob who
19 stormed and invaded the Capitol, on Jan. 6, 2012, and (2) is Trump, therefore,
20 disqualified from being president of the United States?

21 276. The claims made by the representative party of the class, plaintiff, are
22 typical of the claims of each class member.

23 277. The representative of the class, plaintiff, more than fairly, vigorously,
24 and zealously will represent and adequately protect the interests of all class
25 members, both himself and through his very zealous attorneys.

26 278. Prosecution of separate actions by individual class members would be
27 both hopeless and would create a risk of inconsistent and/or varying adjudications
28 with respect to class members, which would establish incompatible standards for

1 parties opposing the classes, and defendants have acted and will continue to act on
 2 grounds generally applicable to every class member in both classes, and the class
 3 questions not only predominate but are the only questions that exist, and this
 4 action is the far superior manner to other available methods for fairly and
 5 efficiently adjudicating the controversies: indeed, Trump voluntarily has entered
 6 this action and willingly has submitted himself to the personal jurisdiction of the
 7 court.

8 279. Specifically, the class members' interests in individually controlling the
 9 prosecution or defense in separate actions do not exist, and there are no anticipated
 10 difficulties in managing this class action, especially as to identification of class
 11 members (through voting rolls and lists), and providing notice to all class
 12 members, by a means to be approved by the court.

13 280. Class 1 is comprised of all registered, Republican, Los Angeles County
 14 voters; Class 2 is comprised of all registered, Republican California voters; and,
 15 Class 3 is comprised of all registered, Republican United States voters.

16 281. An enormous benefit of this action being maintained as a class action
 17 is that once Trump has litigated the issue of insurrection/rebellion/aid to the
 18 enemy and his qualification or not to be president, those determinations will be
 19 binding on him, by way of collateral estoppel, and never again will be able to be
 20 litigated by him because he would be barred from re-litigating these issues, thus
 21 saving the time of innumerable courts, so far, according to Trump, 36 courts,
 22 having to deal with this matter. *See, e.g.* the numerous, now-pending actions on
 23 this topic, around the Country. Doc. Trump's 23 (Trump's [Improperly-Filed]
 24 Notice of Pendency of Other Actions) (36, different such actions so far).²
 25

26
 27 1. Castro v. FEC, 1:22-cv-02176 (D.D.C.). Case dismissed for lack of standing.
 28 Affirmed (D.C. Cir. April 10, 2023). Pro per plaintiff. 2. Castro v. Trump, 9:23-cv-
 80015 (S.D. FL). Case dismissed for lack of standing. Pending appeal before the

1
2 11th Cir. #23-11837, Petition for writ of certiorari before judgment denied on
3 October 2, 2023 (#23-117). Pro per plaintiff. 3. Schaefer v. USA and Trump, 23-
4 cv-1451 (S.D. CA). Pro per plaintiff. 4. Sladek v. Trump, 1:23-cv-02089 (D. CO).
5 Pro per plaintiff. 5. Stilley v. Trump, 4:23-cv-773 (E.D. AR). Pro per plaintiff. 6.
6 Caplan v. Trump, 23-cv-61628 (S.D. FL). Case dismissed for lack of standing. Pro
7 per plaintiff. 7. Castro v. Trump, New Hampshire State Court, Merrimack Superior
8 Court, 217- 2023-cv-00462. Case dismissed by plaintiff to proceed in Federal
9 Court. Pro per plaintiff. 8. Washington v. Trump, 1:23-cv-00941 (D. DE). Pro per
10 plaintiff. 9. Kersey v. Trump, 1:23-cv-12019 (D. MA). Pro per plaintiff. 10. Castro
11 v. Schmidt and Trump, 390 MD 2023, PA Supreme Court. Pro per plaintiff. 11.
12 Perry-Bey v. Trump, 1:23-cv-01165 (E.D. VA). Pro per plaintiff. 12. Castro v.
13 Scanlan and Trump, 1:23-cv-00416. (D. NH) Pro per plaintiff. 13. Castro v. Fontes
14 and Trump, 2:23-cv-01865. (D. AZ). Pro per plaintiff. 14. Castro v. Bellows and
15 Trump, 1:23-cv-335 (D. ME). Pro per plaintiff. 15. Castro v. Aguilar and Trump,
16 2:23-cv-01387 (D. NV). Pro per plaintiff. 16. Dewald v. Trump, 1:23-cv-07833
17 (S.D. NY) Pro per plaintiff. 17. Anderson v. Griswold and Trump, 2023CV32577,
18 District Court for County of Denver. Attorney Mario Nicolais, 7830 W. Alameda
19 Ave., Suite 103-301, Lakewood, CO 80226. (720) 773-1526. 18. Castro v.
20 Henderson and Trump, 2:23-cv-00617 (D. UT). Case dismissed by pro per
21 plaintiff. 19. Castro v. Schmidt and Trump, 1:23-cv-01468 (M.D. PA). Case
22 dismissed by pro per plaintiff. 20. Castro v. Zirix and Trump, CIV-23-781 (W.D.
23 OK). Case dismissed by pro per plaintiff. 21. Castro v. Schwab and Trump, 6:23-
24 cv-01184 (D. KS). Pro per plaintiff. 22. Castro v. McGrane and Trump, 1:23-cv-
25 00393 (D. ID). Pro per plaintiff. 23. Castro v. Bell and Trump, 5:23-cv-00496
26 (E.D. N.C.). Pro per plaintiff. 24. Stilp v. Trump and Schmidt, 1:23-cv-01489
27 (M.D. PA). Pro per plaintiff. 25. Castro v. Knapp and Trump, 3:23-cv-04501 (D.
28 S.C.). Magistrate Judge recommends that preliminary injunction be denied. Pro per
plaintiff. 26. Castro v. Warner and Trump, 2:23-cv-00598 (S.D. W.V.). Magistrate
Judge recommends that preliminary injunction be denied. Pro per plaintiff. 27.
Castro v. Oliver and Trump, 1:23-cv-00766 (D. N.M.). Magistrate Judge
recommends that case be dismissed for lack of jurisdiction. Pro per plaintiff. 28.
Castro v. Jacobsen and Trump, 6:23-cv-00062 (D. MT). Pro per plaintiff. 29.
Grove v. Simon, #A23-1354, Minnesota Supreme Court. Attorney David J. Zoll,
100 Washington Ave. S., Minneapolis, MN, (612) 596-4028. 30. Bellocchio v.
Tahesha Way, County of Mercer, New Jersey. 31. Castro v. Galvin and Trump,
1:23-cv-12121 (D. MA). Pro per plaintiff. 32. Castro v. Thomas and Trump, 3:23-
cv-01238 (D. CT). Pro per plaintiff. 33. Ian Anthony Medina v. Trump, 2023-
023947-CA-01, Miami-Dade Court, Pro per plaintiff. 34. Castro v. Albence and

1 282. Therefore, this action is maintainable under F.R. Civ. P. Rule 23(a), &
2 23(b)(1)(A),(B)(1), (2), and (3).

3 283. Although there would appear to be no notice requirement as to (B)(1)
4 & (2) classes, the nature of the notice to be provided to class members would be
5 decided by the court.

6 284. By virtue of these allegations, plaintiff is entitled to declaratory and
7 injunctive relief.

8 **WHEREFORE**, plaintiff requests relief against defendant, as follows:

9 1. Declaratory relief that Trump is disqualified, prohibited, and barred from
10 the office of president of the United States, because he engaged in insurrection,
11 rebellion, and providing aid and comfort to the enemies of the United States;

12 2. Declaratory relief that Trump's name may not be placed on any
13 California ballot for president of the United States;

14 3. Injunctive relief prohibiting defendant Weber from placing Trump's
15 name on any 2024 presidential primary or general election ballot;

16 4. Costs of suit, including attorneys' fees;

17 5. Damages, compensatory and punitive, to plaintiff on his state law claim;
18 and,

19 6. Such other relief as is just and proper.
20

21 **YAGMAN + REICHMANN, LLP**

22 By: /s/ Stephen Yagman
23 **STEPHEN YAGMAN**
24
25

26 Trump, 1:23-cv-01068 (D. DE). Pro per plaintiff. 35. Steinmetz v. New York
27 Board of Elections and Trump, 50560/2023, Supreme Court of Westchester Co.,
28 New York. Pro per plaintiff. 36. Castro v. Griswold and Trump, 1:23-cv-02543
(D. CO). Pro per plaintiff.